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State of Wisconsin
Department of Industry, Labor and Human Relations

Please Post!
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PECFA UPDATE #10

CHANGE ORDERS

When costs exceed the estimated amounts submitted for the selected remedial alternative and/or the long-term operation and maintenance then notification and/or Department approval is required per §ILHR 47.33(2) and §ILHR 47.33(4). Commodity service overruns require a simple notification in writing to the Department and the claimant. Consulting service overruns require written justification and the cost of the exceedence. This is called a change order. Failure to provide a change order shall constitute grounds for disallowing the reimbursement of these additional costs.

Due to the large number of change orders, the Department's current policy is to file the change order and eligibility of these additional costs is determined at claim review time. The Department will not grant approval to exceed the estimated costs prior to claim review.

CLAIM SUBMITTAL

The quality of the submitted claims still needs major improvement. *PECFA UPDATE #6* attempted to improve the level of completeness of the claim packages and claim submittals have improved, down from 85% return rate to 10%. The Department believes that the submittal checklist, which includes signatures, reports, insurance certificates and other items, is the reason for the improvement. An area that has seen little or no improvement is the submittal of published ineligible costs. These include but are not limited to; ineligible tank systems (residential gas <1,100 gal. and commercial heating oil consumed on premise where stored), ineligible products (solvents), tank closure and tank upgrade costs. Time spent reviewing and returning claims with ineligible costs, products or tanks, severely slows the program's audit efficiency and the ability to effectively reimburse claimants.

§ILHR 47.30(4) and §ILHR 47.33(2)(c) details the process for notification to the Department and the Department's approval requirements if a contamination contains both eligible and ineligible products. The Department must approve the methodology to divide costs prior to the submittal of the claim.

Effective immediately, if Department approval is not obtained prior to the submittal of the claim, PECFA claim reviewers will divide eligible and ineligible costs and deduct the ineligible amount from the claim during the auditing process. Consistent with the program's obligation to reimburse only eligible costs, the most conservative methodology will be utilized.

	<p>The Department will allow claimants to notify the Department that their submitted claim contains published ineligible costs. The <u>claimant</u> may notify the Department in writing of the ineligible costs and <u>propose</u> a methodology to divide the costs. The claim reviewer will consider the proposed methodology during claim review and will make a decision to approve or disapprove the proposed methodology. Claim reviewers will <u>not</u> request additional information regarding the methodology to divide these ineligible costs. The claim reviewer will make the determination of the appropriate amount.</p> <p>Claims submitted in the future must have the Department's approval of the methodology to divide costs prior to the submittal of the claim or the Department will divide the eligible and ineligible costs as described above. Additional actions by the Department may include; disqualification of the project manager, disqualification of the consulting firm and possible PECFA investigations if there is an attempt to defraud the program.</p>
CREDENTIALS (ILHR 5)	<p>To better serve the Safety & Building Division's external customers, a new chapter of the DILHR Administrative Code is currently under development. Chapter ILHR 5, Credentials, will soon place all of Safety & Building's licensing, certification and registration requirements within one rule. In addition to PECFA, the Division's licensing, certification and registration includes such activities as; plumbing, electrical, sewage system design and construction and explosive blasting. Within the draft Chapter ILHR 5 are two (2) year terms for PECFA consultants and consulting firms, application (\$20) and registration (\$50) fees, and disqualification procedures. Although Chapter ILHR 5 includes many of the Chapter ILHR 47 (§ILHR 47.40-47.41) requirements, specific requirements of Chapter ILHR 47 will continue to be applicable.</p>
COMMODITY SERVICES	<p>Commodity services less than \$500 do not require bidding if the service is not utilized multiple times. This exemption from bidding is for <u>commodity services</u> only.</p>
ELIGIBILITY LETTERS	<p>Eligibility letters currently require 2-3 weeks to process, assuming the required information is available. This information includes; tank registration number(s), the <i>Initial Claim Request Form</i> and the owner's signature. Please do not call the staff unless adequate time has passed since the submittal and you have requested the eligibility letter from the claimant.</p>
EQUIPMENT DISPOSAL	<p>Remedial equipment disposal is the responsibility of the claimant. Even though the PECFA program has reimbursed for the remedial equipment, the program is not the owner of the equipment. The program's only remaining interest is if there is an excess value which must be returned to the fund. If the selling price is more than the disposal cost then this "income" has to be recognized and must be returned to the fund. PECFA will not reimburse for the disposal costs.</p>

*INFORMATION
ABOUT PECFA*

INFORMATION ABOUT PECFA [SBD-10083-P(R. 09/95)] has been revised and is available to the public. The first printing of *INFORMATION ABOUT PECFA* [SBD-10083-P(N. 10/94)] had some misprints. Both pieces are considered by the Department to be informational only and should not be used in place of the Wisc. State Statutes and Administrative Codes.

INITIAL CLAIM
REQUEST FORM

Attached is the latest Initial Claim Request Form. Please utilize this form.

INVOICE FORMAT

Please identify phases as outlined below on future invoices and claim submittals. The Department understands this may change the invoice format for many firms. These changes are due to the necessity to track costs associated with the investigation cap (\$40K), the remedial consultant maximum reimbursable amount and O&M consultant maximum reimbursable amount.

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- ◆ Investigation/Remedial Action Planning,
 - ◆ Remedial Activities (including one year of startup) and
 - ◆ Operation and Maintenance.
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NEW FORM 4-A

The Form 4-A has been revised to reflect the concerns consulting firms have raised regarding the form's original wording. The New Form 4-A is worded as follows:

"We, the claimant and the consulting firm certify with our signatures that, to the best of our knowledge, that the activities associated with the progress payment box checked have been completed and represent what is currently being claimed for reimbursement. If the box checked is for Completion of Site Investigation (SI) and Proposed Remedial Action Plan (RAP), we have, according to currently accepted standards of engineering and scientific practice, completed the SI/RAP.

The vertical and horizontal petroleum contamination in soil and groundwater has been investigated both on-site and off-site and the required ILHR 47 remedial alternatives have been developed as described in the SI/RAP. The claimant acknowledges that no additional costs will be claimed to the fund for investigation services or the development of remedial alternatives (except for sites where DILHR written approval for emergency or other action was granted or in the event that WDNr requires additional work). The eligibility for reimbursement of additional investigation or remedial alternative development work required by the WDNr will be determined at time of claim review."

The New Form 4-A is available at this time. Send a self-addressed, stamped envelope (#10) along with the PECFA claim number to request the new form. Please do not phone orders to the staff. As always, no claim number, no New Form 4-A.

OPERATION AND MAINTENANCE	<p>A detailed annual cost estimate must be submitted when the site enters into long-term operation and maintenance. Very few have been submitted to date. All engineered remedial systems with a contract signed after February 1, 1993, and operating one year after the installation of the system must submit this cost estimate [§ILHR 47.33(3)]. The Department does not “approve” these costs. However, a cursory review and possible comment may take place at the time the estimate is placed into the claim file.</p>
PROGRESS PAYMENTS	<p>To reach the \$100,000 milestone all of the qualifying expenses must be PECFA <u>eligible and paid</u> costs. Claims submitted with less than \$100,000 <u>eligible</u> PECFA costs will be returned to the claimant.</p>
REMEDIAL ACTIVITIES	<p>Remedial activities may start prior to PECFA “approval” [§ILHR 47.33(2)]! The consideration of alternatives, (if total remedial costs are going to exceed \$80K [§ILHR 47.335(3)]) and the detailed cost estimate of the selected alternative [§ILHR 47.33(2)] <u>must be submitted prior to the start of remedial activities</u>. A home heating oil tank system is the only system exempt from this requirement. Remedial activities generally means or refers to on-site remedial activities and do not include bid letting, design or pilot testing.</p>
STOCKPILES	<p>Stockpiles have been addressed in <i>PECFA UPDATES #3 and #5</i>. Please reread these issues and understand the amount of time it requires the staff to continually answer this question.</p>

Finally, thank you for participating in the PECFA in-situ survey. The information gathered will be used to better understand the PECFA fund’s future liabilities.

We are sorry to report that Miles Mickelson, PECFA Section Chief, is on an indefinite medical leave from his duties. Calls and correspondence will be distributed to the most appropriate person during his absence. Personal correspondence may be sent to; 2268 Hwy AB, McFarland, WI 53558.

Thank you,

The PECFA Staff